IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

MFA.No. 89 of 2006()

APPEL.151/1992 of APPELETTE TRIBUNAL FOR FOREIGN EXCHANGE, NEW DELHI
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APPELLANT/APPELLANT:

J.VIJAYAKRISHNA PILLAI,
PADINJATTINKARA HOUSE, VELLAMANNOOR P.O.,
VIA PARIPALLY, KOLLAM DIST.

BY ADV. SRI.P.A.NOOR MUHAMMED
SRI.C.K.PRASAD

RESPONDENTS/RESPONDENTS:
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1. THE DIRECTOR,
ENFORCEMENT DIRECTORATE,
NEW DELHI.

2. THE ASSISTANT DIRECTOR,
ENFORCEMENT DIRECTORATE, THYCAUD,
THIRUVANANTHAPURAM-14.

BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.89 OF 2006 (E)

Dated this the 19th day of June, 2007

J U D G M E N T

KOSHY,J.

Petitioner was employed in a Gulf country for about 13 years. He came back in 1988. Since he decided not to go back, he requested his friend to sent back his money invested in the Bank at Abudhabi and the money was sent back to him. He deposited Rs.80,000/- in the wife's account in Velinalloor Service Co-operative Bank and kept Rs.20,000/- in cash. The above amount was confiscated stating that the amount was sent without getting permission from the Reserve Bank of India. Investigating authority found that without permission of the Reserve Bank of India, receiving so much money is violation of Section 9(1) (f) (i) of the Foreign Exchange Regulation Act, 1973. But considering the fact that appellant deposited 80% of the amount in Bank shows that he has no mens rea. Out of his ignorance this was done. The adjudicating authority and

1st appellate authority also found so and a lenient view was taken. He was directed to pay Rs.50,000/- as penalty and it was to be realised from Rs.1,00,000/- confiscated. Minimum penalty is only Rs.5,000/-. Here in this case appellant has earned the money by hard labour for about 13 years. When he decided not to go back his friend collected the amount due to him and sent the amount. Non obtaining of permission of R.B.I. was only due to ignorance. However, there is a technical violation of the Act as found by the authorities. In the above circumstances, we reduce the penalty to Rs.10,000/- and after adjusting the penalty, balance amount should be returned to the appellant. With the above observations this M.F.A. is partly allowed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO. OF 2006 ()

J U D G M E N T

8th June, 2007